

1 Joseph F. Jennings (State Bar No. 145,920)

2 joe.jennings@knobbe.com

3 Brian Horne (State Bar No. 205,621)

4 brian.horne@knobbe.com

5 Sean M. Murray (State Bar No. 213,655)

6 sean.murray@knobbe.com

7 Sarah Lampton (State Bar No. 282,404)

8 sarah.lampton@knobbe.com

9 Marissa Calcagno (State Bar No. 279,783)

10 marissa.calcagno@knobbe.com

11 KNOBBE, MARTENS, OLSON & BEAR, LLP

12 2040 Main Street

13 Fourteenth Floor

14 Irvine, CA 92614

15 Phone: (949) 760-0404

16 Facsimile: (949) 760-9502

17 Attorneys for Plaintiff

18 KFx Medical Corporation

19 Robert W. Dickerson, Jr. (State Bar No. 089367)

20 DickersonR@dicksteinshapiro.com

21 Lawrence R. LaPorte (State Bar No. 130,003)

22 laportel@dicksteinshapiro.com

23 DICKSTEIN SHAPIRO LLP

24 2049 Century Park East, Suite 700

25 Los Angeles, CA 90067

26 Phone: (310) 772-8300

27 Facsimile: (310) 772-8301

28 Charles W. Saber (admitted *pro hac vice*)

saberc@dicksteinshapiro.com

Salvatore P. Tamburo (admitted *pro hac vice*)

tamburos@dicksteinshapiro.com

Megan S. Woodworth (admitted *pro hac vice*)

woodworthm@dicksteinshapiro.com

S. Gregory Herrman, (admitted *pro hac vice*)

herrmanG@dicksteinshapiro.com

DICKSTEIN SHAPIRO LLP

1825 Eye Street Northwest

Washington, DC 20006

Phone: (202) 420-2200

Facsimile: (202) 420-2201

Attorneys for Defendant and Counterclaimant

Arthrex, Incorporated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KFX MEDICAL CORPORATION, a
Delaware corporation,

Plaintiff and Counterdefendant,

v.

ARTHREX, INCORPORATED., a
Delaware corporation,

Defendant and Counterclaimant.

} Case No. 11cv1698 DMS (BLM)

} **PROPOSED JOINT**
} **STATEMENT OF THE CASE**

} Trial Date: August 19, 2013
} Time: 9:00 A.M.
} Courtroom 13A
} Honorable Dana M. Sabraw

1 Pursuant to Paragraph 6 of the Court's July 19, 2013, Order Regarding
2 Trial [D.I. 138], Plaintiff KFx Medical Corporation ("KFx") and Defendant
3 Arthrex, Inc. ("Arthrex") jointly submit this Statement of the Case to be read to
4 the jury.

5 **STATEMENT OF THE CASE**

6 This is a patent infringement case. The Plaintiff in this case is KFx
7 Medical Corporation. The Defendant is Arthrex, Inc.

8 This case concerns three patents owned by KFx. These are U.S. Patent
9 Nos. 7,585,311, 8,100,942, and 8,109,969, which are titled "System and Method
10 for Attaching Soft Tissue to Bone." The parties and the Court often refer to
11 patents by their last three numbers, so in this case they will refer to the '311
12 patent, the '942 patent and the '969 patent.

13 KFx maintains that Arthrex has actively induced infringement of the KFx
14 patents through the marketing and promotion of surgical techniques for
15 repairing rotator cuffs, which Arthrex calls the SutureBridge and SpeedBridge
16 surgical techniques, as well as through the marketing and promotion of products
17 for use with those surgical techniques. KFx has the burden of proving
18 infringement by a preponderance of the evidence.

19 Arthrex does not believe it has induced or contributed to any infringement
20 of the KFx patents because its methods are different than those described and
21 claimed in the KFx patents. Arthrex also believes that the KFx patents are
22 invalid in view of techniques that were known or performed, or described in
23 patents or other publications, prior to KFx's invention. Arthrex also believes
24 that certain claims of the KFx patents are invalid because they do not include a
25 sufficient written description of the claims. Arthrex has the burden of proving
26 invalidity by clear and convincing evidence.

27 You will be asked to determine whether Arthrex has infringed the KFx
28 patents. You will also be asked to decide whether KFx's patents are invalid.

1 If you determine that Arthrex has infringed a KFx patent and that KFx
2 patent is valid, you will be asked to determine the amount of damages that
3 Arthrex owes KFx for the infringement. KFx has the burden of proving its
4 damages by a preponderance of the evidence. You will also be asked to
5 determine whether the infringement was willful. KFx has the burden of proving
6 that any infringement was willful by clear and convincing evidence.

7
8 KFXL.064L
9 15994251
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I hereby certify that on August 12, 2013, I caused the **PROPOSED JOINT STATEMENT OF THE CASE** to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the following person(s):

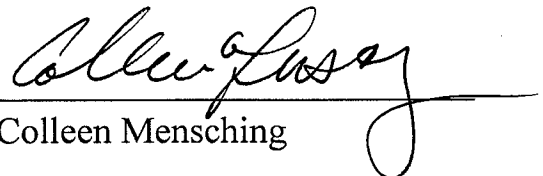
Robert W. Dickerson
dickersonr@dicksteinshapiro.com
Lawrence La Porte
laportel@dicksteinshapiro.com
DICKSTEIN SHAPIRO LLP
2049 Century Park East, Suite 700
Los Angeles, CA 90067
T: 310-772-8300

Charles W. Saber
saberc@dicksteinshapiro.com
Salvatore P. Tamburo
tamburos@dicksteinshapiro.com
Megan S. Woodworth
woodworthm@dicksteinshapiro.com
S. Gregory Herrman
herrmang@dicksteinshapiro.com
DICKSTEIN SHAPIRO LLP
1825 Eye Street Northwest
Washington, DC 20006
T: 202-420-2200

I certify and declare under penalty of perjury under the laws of the State of California that I am employed in the office of a member of the bar of this Court at whose direction the service was made, and that the forgoing is true and correct.

Executed on August 12, 2013, at San Diego, California.

15994443


Colleen Mensching